

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2013 JUL 22 PM 4:44

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY
DEPUTY

CAROLYN BARNES,
PLAINTIFF,

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V.

CAUSE NO. A-12-CV-028-LY

TRAVIS COUNTY SHERIFF'S
DEPARTMENT, ET AL.,
DEFENDANTS.

ORDER ON REPORT AND RECOMMENDATION

Before the court is the above-styled and numbered cause of action, which was referred to the United States Magistrate Judge for findings and recommendations. *See* 28 U.S.C. § 636(b)(1). The Magistrate Judge filed his Report and Recommendation on April 25, 2013 (Clerk's Doc. No. 29), by which he recommends that this court dismiss this action with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal Rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations of the Magistrate Judge within 14 days after being served with a copy of the Report and Recommendation, and thereby secure a *de novo* review by the District Court. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a Report and Recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

The record reflects that Plaintiff Carolyn Barnes received a copy of the report and recommendation on April 30, 2013, making any objections due on or before May 14, 2013. Barnes

timely filed her objections to the report and recommendation on May 8, 2013 (Clerk's Doc. No. 32), along with a brief in support of her objections (Clerk's Doc. No. 33), and a Motion to Strike Magistrate's Report and Recommendation on May 8, 2013 (Clerk's Doc. No. 35).¹ Having considered the objections, the case file, the applicable law, and having undertaken a *de novo* review of the entire record, the court finds that the report and recommendation is correct and should be accepted and adopted by the court.

This court agrees with the Magistrate Judge that this case should be dismissed with prejudice. Rule 41(b) authorizes a court to dismiss a case for "failure to the plaintiff . . . to comply with the[] federal rules or any order of court." The Magistrate Judge found grounds for dismissal in Barnes's failure to comply with Rule 8's pleading requirement and an order of the court to replead her claims in a single, concise document ultimately limited to 30 pages. Rather than attempting to state her claims in a single concise document, Barnes responded with a motion titled "Plaintiff's Motion for a More Definite Statement and Due Process Notice of the Exact Reasons the Third Amended Complaint is Defective or Deficient and Motion to Extend Time to Amend after Receipt of Due Process Notice of How the Third Amended Complaint is Not a 'Coherent and Concise Complaint' or How it Violates Fed. R. Civ. P. 8." (Clerk's Doc. No. 28). The current live pleading in this case totals 569 pages, spans four documents, and names 61 Defendants. By definition, such a pleading fails to satisfy Rule 8.

Barnes maintains that she has diligently attempted to comply with all orders of the court, but that it is not possible to plead all her claims against all Defendants in 30 pages or less. She also

¹That same day, Barnes also filed a Motion to Appoint Counsel (Clerk's Doc. No. 34) and a Motion for Leave to File Sworn Testimony in Support of Causes of Action on May 22, 2013 (Clerk's Doc. No. 36).

complains that the report and recommendation arbitrarily imposes the ultimate sanction of dismissal with prejudice without cause to do so. The court finds no merit in either of Barnes's criticisms. However, the court will give Barnes one final opportunity to replead her claims in a meaningful fashion. Barnes may replead her claims in a single concise amended complaint not to exceed 50 pages. If Barnes complies, the court will set aside the dismissal with prejudice and reopen this case. If Barnes does not, the court will render a final judgment of dismissal. Accordingly,

IT IS HEREBY ORDERED that Barnes's Objection to Magistrate's Report and Recommendation (Clerk's Doc. No. 32) are **OVERRULED** and Barnes's Motion to Strike Magistrate's Report and Recommendation (Clerk's Doc. No. 35) is **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge filed in this cause (Clerk's Doc. No. 29) is hereby **ACCEPTED** and **ADOPTED** by the court.

IT IS FURTHER ORDERED that Barnes's Motion to Appoint Counsel (Clerk's Doc. No. 34) and Motion for Leave to File Sworn Testimony in Support of Causes of Action (Clerk's Doc. No. 36) are **DISMISSED**.

IT IS FURTHER ORDERED that this case is **DISMISSED WITH PREJUDICE**.

IT IS FINALLY ORDERED that Barnes file an amended complaint consistent with this order on or before **Monday, August 19, 2013**.

SIGNED this 22nd day of July, 2013.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE